

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

LYMAN McCOMB JOHNSON, Individually
and as Executor of the Estate of
RUTH W. JOHNSON, Deceased

Claim No. CU-1114

Claim No. CU-2016

Decision No. CU-6104

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Daisy Richards Bisz
Attorney at Law

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by LYMAN McCOMB JOHNSON and RUTH W. JOHNSON, each in the amount of one-half of \$278,609.14, based upon the asserted ownership and loss of certain real and personal property and stock interests in Cuba. Claimant LYMAN McCOMB JOHNSON has been a national of the United States since birth. RUTH W. JOHNSON, a United States national since birth died on June 25, 1970 and her husband, LYMAN McCOMB JOHNSON, having been appointed Executor of her estate, is substituted as claimant for her interest.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any

rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The amended claims are described as follows:

House in Miramar	\$ 56,000.00
Stock interest in Industrias Metalicas y Electricas, S.A.	74,256.00
Stock interest in Inmobiliaria Demecia, S.A.	62,977.79
Note due LYMAN McCOMB JOHNSON from Inmobiliaria Demecia, S.A.	54,426.65
Household furnishings and other personalty	<u>30,948.70</u>
Total	\$278,609.14

The Commission finds that LYMAN McCOMB JOHNSON and his spouse owned a house at 309 12th Street, Miramar, the household furnishings therein and other items of personalty and stock interests subject of these claims further discussed below. Pursuant to the Community Property Law of Cuba claimant's wife owned a one-half interest therein.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Residence at 309 12th Street, Miramar

Claimant LYMAN McCOMB JOHNSON certifies that he and his wife left their home in the hands of their servants on May 5, 1961 and that it was taken by the Government of Cuba on March 26, 1963.

Based on the evidence of record including the original telegram addressed to LYMAN McCOMB JOHNSON advising him that the house had to be surrendered on March 26, 1963, the Commission finds that the residence and the personalty therein belonged to claimant LYMAN McCOMB JOHNSON and his spouse, and that these properties were taken by the Government of Cuba on March 26, 1963.

The record includes in support of the asserted value of the house, claimant LYMAN McCOMB JOHNSON's affidavit in which he states that he purchased the residence in 1952 for \$46,000.00 and thereafter added \$10,000.00 in improvements detailed in the record. This represents \$25,000.00 for the land and \$31,000.00 for the building, according to the Statement of Claim. He describes the residence as a 2-story house on a lot of 1,000 square yards.

The record also contains a photograph of the residence and affidavits from individuals with personal knowledge of claimants' home and some of these with knowledge of its purchase price and cost of improvements. He further estimates the value at the time it was taken as \$75,000.00 but offers nothing in support. The record also includes claimant's report of May 19, 1960 to the American Embassy in Havana in which he asserted the value of the residence was \$70,000.00, but did not outline any basis for the figure.

Based on the entire record, the Commission finds that the home including its improvements had a value of \$56,000.00 on the date of loss, and that claimant and his spouse suffered a loss in this amount within the meaning of Title V of the Act.

Household Furnishings and Other Personalty

The record includes a copy of an insurance policy taken out in June, 1960 by claimant LYMAN McCOMB JOHNSON, on the personalty in his home in the total face value of \$43,590.00. This policy includes an itemized list of jewelry and furs representing \$14,790.00 of the total insured. The remainder

of the policy covers household furnishings, clothing, paintings and books valued at a total of \$28,800.00. Claimant, through counsel, states that the \$30,948.70 asserted for this portion of these claims represented \$28,800.00 for household contents, \$998.70 representing a bank account with the First National Bank of Boston and \$1,150.00 for jewelry left in a private depository in Cuba.

Based on the evidence of record the Commission finds that the household furnishings and other personalty in the home had a value of \$28,800.00. The portion of these claims based on the loss of a bank account is denied for failure of proof and the portion based on the personalty deposited in a private depository in Cuba is denied inasmuch as there is no evidence of record that this property was taken by the Government of Cuba.

Industrias Metalicas y Electricas, S.A. (Metalicas)
and Inmobiliaria Demecia, S.A. (Demecia)

The record includes the aforementioned report of May 19, 1960 to the American Embassy wherein claimant sets forth the capitalization of three Cuban corporations, Metalicas, Demecia and Cia. de Instalaciones Electricas; and a realty company with property valued at \$124,000.00 subject to a \$40,000.00 mortgage. The report also states that the plan was to merge two of the companies and operate as Metalicas with authorized capital of \$200,000.00 and paid up capital of \$100,000.00.

Claimant has certified that he owned 91% of the outstanding shares of Metalicas and 5/6 of the outstanding shares of Demecia.

Claimant submitted 8 certificates evidencing claimant's ownership of 910 shares of Metalicas having a par value of 100 pesos each and of five shares of Demecia having a par value of 500 pesos each of an outstanding capitalization of 3,000 pesos. The record also includes a copy of a promissory note, dated July 1, 1960, from Demecia to claimant in the sum of 54,426.65 pesos (the peso being on a par with the United States dollar).

Based on the evidence of record the Commission finds that claimant and decedent had equal interests in 910 shares of Metalicas and 5 shares of Demecia.

Metalicas was listed as nationalized by the Government of Cuba on October 24, 1960 by Resolution 3 pursuant to Cuban Law 851. In the absence of evidence to the contrary, the Commission finds that Metalicas was nationalized by the Government of Cuba on October 24, 1960 and that Demecia was taken on the same date.

Claimant has certified that the net book assets of the corporations were \$81,600.00 (Metalicas) and about \$74,000.00 (Demecia). The record includes a consolidated balance sheet prepared by a public accountant which purports to reflect the estimated financial condition of Metalicas and Demecia as of October 26, 1960. It also includes a reconstructed balance sheet of each of these corporations prepared by claimant, as follows:

Cia. Industrias Metalicas y Electricas, S.A.

Assets:

Inventory	\$ 50,000.00
Accounts Receivable	50,000.00
Machinery and Equipment	<u>60,000.00</u>
Total Assets	\$160,000.00

Liabilities:

Loan due bank	\$ 26,000.00
Notes payable	19,400.00
Accounts payable	15,000.00
Advances from Phillips Cubana	<u>18,000.00</u>
Total Liabilities	\$ 78,400.00

NET ASSETS \$ 81,600.00

Cia. Inmobiliaria Demecia, S.A.

Assets:

Building and improvements	\$120,000.00
Land on which building situated	<u>50,000.00</u>
Total Assets	\$170,000.00

Liabilities:

Mortgage due bank	\$ 40,000.00
Note due L. M. Johnson	<u>54,426.65</u>
Total Liabilities	\$ 94,426.65

NET ASSETS \$ 75,573.35

Based on the entire record the Commission finds that the net worth of Metalicas was \$81,600.00 and of Demecia was \$75,573.35 on the date of loss, that claimant and decedent owned a 91% interest in the former and a 5/6 interest in the latter and in this regard that they suffered combined losses of \$74,256.00 and \$62,977.78, respectively, as a result of the intervention of these companies by the Government of Cuba. In addition the Commission finds that Demecia owed claimant LYMAN McCOMB JOHNSON \$54,426.65, and that this sum was due and payable. The Commission has held that debts of nationalized Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Recapitulation

The losses of claimants within the scope of Title V are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>	
		<u>LYMAN McCOMB</u> <u>Individually</u>	<u>JOHNSON</u> <u>As Executor</u>
Residence	March 26, 1963	\$ 28,000.00	\$ 28,000.00
Household furnishings	March 26, 1963	14,400.00	14,400.00
Stock interest in Metalicas	October 24, 1960	37,128.00	37,128.00
Stock interest in Demecia	October 24, 1960	31,488.89	31,488.89
Debt of Demecia	October 24, 1960	<u>27,213.32</u>	<u>27,213.33</u>
		\$138,230.21	\$138,230.22

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act

of 1949, as amended, interest shall be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant claim, it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
LYMAN McCOMB JOHNSON	October 24, 1960	\$ 95,830.21
	March 26, 1963	<u>42,400.00</u>
		\$138,230.21
LYMAN McCOMB JOHNSON As Executor	October 24, 1960	\$ 95,830.22
	March 26, 1963	<u>42,400.00</u>
		\$138,230.22

CERTIFICATIONS OF LOSS

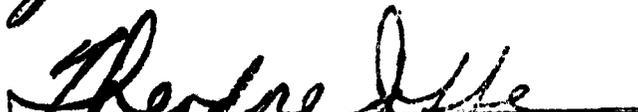
The Commission certifies that LYMAN McCOMB JOHNSON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Thirty-eight Thousand Two Hundred Thirty Dollars and Twenty-one Cents (\$138,230.21) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that LYMAN McCOMB JOHNSON as Executor of the Estate of RUTH W. JOHNSON, Deceased, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Thirty-eight Thousand Two Hundred Thirty Dollars and Twenty-two Cents (\$138,230.22) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAR 11 1971


Lyde S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)